

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RYAN DEAN and DANA MOORER,

Plaintiffs,

v.

KIM JOHNSON, DIRECTOR OF THE
STATE OF CALIFORNIA
DEPARTMENT OF SOCIAL
SERVICES, et al.,

Defendants.

No. 2:22-cv-01054-JAM-JDP

**ORDER GRANTING DEFENDANTS'
MOTIONS TO DISMISS AND
PLAINTIFFS' MOTION TO STAY**

Ryan Dean and Dana Moorner (respectively "R. Dean" or "Moorner") filed this lawsuit against Kim Johnson ("Johnson"), Director of the State of California Department of Social Services; Kern County Human Services ("KCHS"); Dena Murphy ("Murphy"), Director of KCHS; Trezell West; Jacqueline West; Anna Zavala-Garza ("Zavala-Garza"), and other fictitious persons (collectively "Defendants"). Lief Dean ("L. Dean") then filed a separate suit against the same Defendants. See Compl., ECF No. 48. In their respective pleadings, R. Dean, Moorner, and L. Dean (collectively "Plaintiffs") allege constitutional and state law violations relating to Plaintiffs' separation from Cinsere and Classic Pettus ("the Children"). See Second Am. Compl. ("SAC"),

1 ECF No. 38; Compl., ECF No. 48. The Court related R. Dean and
2 Moorer's case to that of L. Dean and consolidated the latter
3 under the former. See Related Case Order ("RCO"), ECF No. 46;
4 Order Consolidating Cases ("OCC"), ECF. No. 47. Defendant
5 Johnson and Defendants KCHS, Murphy, and Zavala-Garza now move to
6 dismiss R. Dean and Moorer's SAC and L. Dean's Complaint pursuant
7 to Federal Rule of Civil Procedure 12(b)(6). See Def. Johnson
8 Mot. to Dismiss II ("Johnson MTD II"), ECF No. 49; Def. KCHS,
9 Murphy, and Zavala-Garza Mot. to Dismiss II ("KCHS MTD II"), ECF
10 No. 50. Plaintiffs filed oppositions to both motions, and
11 Defendants replied. See Opp'n to Johnson MTD II, ECF No. 58;
12 Opp'n to KCHS MTD II, ECF No. 59; see also Johnson Reply, ECF
13 NO. 63; KCHS Reply, ECF No. 66. Plaintiffs also filed a motion
14 to stay this case for 120 days pending the sentencing of
15 Defendants Trezell and Jacqueline West. See Mot. to Stay, ECF
16 No. 72.

17 For the reasons set forth below, the Court grants
18 Defendants' motions to dismiss with prejudice and grants
19 Plaintiffs' motion to stay.¹

20 21 I. FACTUAL ALLEGATIONS

22 As the parties are already familiar with the facts, the
23 Court repeats them only as needed to explain its decision. R.
24 Dean and Moorer (the biological mother and the grandmother of the

25
26 ¹All motions were determined to be suitable for decision without
27 oral argument. E.D. Cal. L.R. 230(g). The hearing for
28 Defendants' motions to dismiss was scheduled for June 27, 2023.
The hearing for Plaintiffs' motion to stay was scheduled for
August 29, 2023.

1 Children) sued Defendants for violations under 42 U.S.C. §§ 1983,
2 1985, 1986, and California law, alleging Defendants unlawfully
3 retained the Children to further a scheme of placing children in
4 "foster care and/or adoption," SAC ¶ 2, for "financial gain,"
5 id. ¶ 6. L. Dean (the grandfather of the Children) filed an
6 almost identical but separate suit consisting of the same
7 allegations. See generally Compl. Plaintiffs allege Defendants
8 persisted with this scheme despite their attempts to reunite with
9 the Children between 2016 and 2019. See SAC ¶ 4; Compl. ¶ 5.

10 Defendant Johnson and Defendants KCHS, Murphy, and Zavala-
11 Garza filed motions to dismiss R. Dean and Moorers' First Amended
12 Complaint ("FAC"). See Def. Johnson Mot. to Dismiss I ("Johnson
13 MTD I"), ECF No. 18; Def. KCHS, Murphy, and Zavala-Garza Mot. to
14 Dismiss I ("KCHS MTD I"), ECF No. 28. The Court granted
15 Defendant Johnson's motion after finding the FAC named Johnson in
16 her official capacity. See generally Order, ECF No. 37. The
17 Court also granted Defendants KCHS, Murphy, and Zavala-Garza's
18 motion to dismiss without prejudice after finding R. Dean and
19 Moorers failed to state a claim because their FAC "uniformly
20 refer[s] to Defendants collectively," id. at 8, and "fail[s] to
21 provide any factual specificity of how each contributed to the
22 alleged abuses," id.

23 R. Dean and Moorers subsequently filed a Second Amended
24 Complaint ("SAC") that names Johnson in her individual capacity
25 and includes other minimal modifications. See generally SAC.
26 Defendant Johnson and Defendants KCHS, Murphy, and Zavala-Garza
27 now move to dismiss R. Dean and Moorers' SAC and R. Dean's
28 Complaint pursuant to Fed. R. Civ. P. ("FRCP") 12(b)(6). See

generally Johnson MTD II; KCHS MTD II. Both motions include requests for judicial notice.

II. OPINION

A. Legal Standard

When weighing a motion to dismiss, courts “accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1031 (9th Cir. 2008). However, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1974 (2007)). Facial plausibility exists when “the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. However, “a formulaic recitation of a cause of action’s elements will not do.” Twombly, 127 S. Ct. at 1965. Such statements are “legal conclusion[s] couched as factual allegation[s]” that must be dismissed. Papasan v. Allain, 106 S. Ct. 2932, 2944 (1986).

B. Judicial Notice

Defendants KCHS, Murphy, and Zavala-Garza ask the court to take judicial notice of various documents—including Exhibit E, the cover page of the complaint filed in the Kern County Superior Court in Charles Pettus, et al. v. County of Kern, Case No. BCV-21-102292, on September 29, 2021, and Exhibit A, the third amended complaint filed in that matter. See KCHS RJN. Federal

1 Rule of Evidence 201 allows the Court to notice a fact if it is
2 "not subject to reasonable dispute," such that it is "generally
3 known" or "can be accurately and readily determined from sources
4 whose accuracy cannot reasonably be questioned." Fed. R. Evid.
5 201(b). The Court must take judicial notice "if requested by a
6 party and supplied with the necessary information." Fed. R.
7 Evid. 201(d). The Court need not, however, take notice of facts
8 that lack additional relevant information. See Adriana Int'l
9 Corp. v. Thoeren, 913 F.2d 1406, 1410 n.2 (9th Cir. 1990)
10 (declining to take judicial notice of another action "not
11 relevant" to the case).

12 The Court "may take judicial notice of court filings and
13 other matters of public record." Reyn's Pasta Bella, LLC v. Visa
14 USA, Inc., 442 F.3d 741, 746 (9th Cir. 2006). Here, Defendants
15 request the Court take judicial notice of the cover page
16 described above to demonstrate the filing of the case—not the
17 veracity of the complaint's contents. See KCHS RJN at 3. The
18 complaint "is readily verifiable and, therefore, the proper
19 subject of judicial notice." Id. Defendants request for
20 judicial notice regarding these exhibits is granted.

21 C. Analysis

22 1. Federal Claims' Statute of Limitations

23 The moving Defendants' motions present numerous legal
24 arguments in support of their request that the SAC and Complaint
25 be dismissed. Most persuasively is their claim that Plaintiffs'
26 federal claims are barred by the statute of limitations governing
27 §§ 1983, 1985, and 1986. "Under federal law, a claim accrues
28 when the plaintiff knows or has reason to know of the injury

1 which is the basis of the action.” Two Rivers v. Lewis, 174 F.3d
2 987, 991 (9th Cir. 1999). Furthermore, in California, §§ 1983
3 and 1985 claims operate under a statute of limitations of two
4 years, while § 1986 claims function under a statute of
5 limitations of one year. See Bledsoe v. City of Stockton Police
6 Dept, No. 22-CV-01654-KJM-KJN PS, 2020 WL 5847142 (E.D. Cal. Oct.
7 1, 2020) (“Title 42 U.S.C. Sections 1983 and 1985 contain no
8 statute of limitations, so federal courts in California typically
9 apply the state's statute of limitations for personal injury
10 actions, along with the forum state's law regarding tolling.”)
11 (internal citations omitted); see also Cal. Civ. Proc. Code §
12 335.1 (“Within two years: An action for assault, battery, or
13 injury to, or for the death of, an individual caused by the
14 wrongful act or neglect of another.”); 42 U.S.C. § 1986 (“[N]o
15 action under the provisions of this section shall be sustained
16 which is not commenced within one year after the cause of action
17 has accrued.”).

18 Here, the federal claims are based on the Children’s removal
19 from R. Dean’s custody, which Plaintiffs state occurred in 2016
20 and 2017. Specifically, the SAC and Complaint state Cinsere was
21 removed in 2016, while Classic was removed in 2017. See SAC ¶ 4;
22 Compl. ¶ 4. As Defendant Johnson argues, “Plaintiffs have no
23 basis to argue [] they did not know, or did not have reason to
24 know, of the injury that forms the basis for each of the federal
25 claims.” Johnson MTD II at 8. As a result, Plaintiffs’ §§ 1983
26 and 1985 claims pertaining to Cinsere expired in 2018, while
27 those relating to Classic lapsed in 2019. Moreover, the statute
28 of limitations on Plaintiffs’ § 1986 claims regarding Cinsere

1 ended in 2017, while those connected to Classic terminated in
2 2018. R. Dean and Moorner did not file their original Complaint
3 until June 17, 2022, while L. Dean's Complaint was filed on
4 December 5, 2022. Both suits were clearly initiated well after
5 the expiration of each federal claims' statute of limitations.

6 The Court reaches the same conclusion even if it assumes
7 that the events triggering each Plaintiffs' claims may have
8 occurred after the Children's removal from R. Dean's custody.
9 For example, the latest event that could initiate R. Dean's
10 claims is the revocation of her parental rights. Although the
11 SAC and Complaint fail to pinpoint exactly when her parental
12 rights were terminated, they state that: (1) "sometime in 2019,
13 Defendants unlawfully attempted to revoke Ms. Dean's parental
14 rights without explanation, while Ms. Moore continued her efforts
15 to have [the Children] placed in her care," see SAC ¶ 51; Compl.
16 ¶ 51; and (2) "[i]n of [sic] March 2019, Ms. Moorner's request to
17 have her grandchildren placed in her was care was denied," see
18 SAC ¶ 54; Compl. ¶ 54. In addition, Plaintiffs provide an
19 exhibit demonstrating the denial of Ms. Moorner's request on March
20 11, 2019. See Exh. A to SAC, ECF No. 38; Exh A. to Comp., ECF
21 No. 48. Plaintiffs own allegations reveal termination of R.
22 Dean's parental rights occurred before March 11, 2019. In turn,
23 at the absolute latest, R. Dean's §§ 1983 and 1985 claims expired
24 on September 5, 2021, while her § 1986 claim terminated on
25 March 11, 2020—all prior to the filing of her case on June 17,
26 2022.²

27 ²The §§1983 and 1985 claims' statute of limitations is September
28 5, 2021 because it includes an additional 178 days due to

1 Similarly, the last event that might trigger Moorer's
 2 federal claims is the denial of her request to have the Children
 3 placed with her on March 11, 2019. As a result, the above
 4 reasoning regarding R. Dean also applies to Moorer's claims.
 5 Therefore, at the very latest, the statute of limitations for
 6 Moorer's §§ 1983 and 1985 claims expired on September 5, 2021,
 7 while that of her § 1986 claim ended on March 11, 2020—before her
 8 case's filing on June 17, 2022.³ Likewise, L. Dean simply states
 9 he expressed interest in obtaining custody of the Children
 10 throughout 2019. Thus, even if the Court assumes that L. Dean
 11 expressed this desire on December 31, 2019, his claims' statute
 12 of limitations all lapsed prior to the filing of his case on
 13 December 5, 2022. Specifically, at the very latest, his §§ 1983
 14 and 1985 claims' statute of limitations ended on June 27, 2022,
 15 while that of his § 1986 claim terminated on June 27, 2021.⁴

16 Notably, Plaintiffs' oppositions to both motions fail to
 17 address these arguments entirely. Instead, they generally argue:
 18 (1) Defendants "are not permitted to "re-file motions to dismiss
 19 that raise the same arguments previously raised and rejected in
 20 earlier-filed motions," Opp'n to Johnson MTD II at 4; and
 21 (2) FRCP "12(g) prohibits successive motions to dismiss that
 22

23 California's tolling of certain statute of limitations from
 24 April 6, 2020, to October 1, 2020 because of the COVID-19
 25 pandemic. See Cal. Ct. R. Appendix 1: Emergency Rules Related to
 26 COVID-19, Rule 9.

27 ³Moorer's §§1983 and 1985 claims' statute of limitations expire
 28 on September 5, 2021 for the reasons explained above. See supra
 note 1.

⁴The dates of L. Dean's claims' statute of limitations'
 expiration include 178 additional days pursuant to the regulation
 cited supra in note 1.

1 raise arguments that could have been made in the prior motion,"
2 id. See also Opp'n to KCHS MTD at 4.

3 Plaintiffs' arguments fail for two reasons. First, although
4 Plaintiff is correct that Defendants presented this argument in
5 their previous motions to dismiss, the Court granted Defendants'
6 motions on different grounds. See Order at 8. As a result, the
7 Court did not previously weigh and reject this argument as
8 Plaintiffs incorrectly contend. Second, FRCP 12(g) is
9 inapplicable to the current situation. Instead, that rule
10 governs when parties file multiple motions to dismiss in response
11 to one complaint. Here, Defendants filed their motions to
12 dismiss after R. Dean and Moorero's filed their SAC and to respond
13 to L. Dean's complaint, which Defendants never responded to
14 previously. "The law is clear in this Circuit that an amended
15 complaint supersedes the original, the latter being treated
16 thereafter as nonexistent." Gundy v. California Dep't of Corr. &
17 Rehab., No. 1:12-CV-01020-LJO, 2013 WL 789096 (E.D. Cal. Mar. 1,
18 2013). As a result, "an amended pleading is a new round of
19 pleadings . . . [and] is subject to the same challenges as the
20 original." Stamas v. Cnty. of Madera, No. CV F 09-0753 LJO SMS,
21 2010 WL 289310, at *4 (E.D. Cal. January 15, 2010). Defendants,
22 in turn, did not violate FRCP 12(g) by raising these arguments in
23 their current motions to dismiss.

24 Given the above, the Court finds Plaintiffs' federal claims
25 are barred by the applicable statutes of limitations and
26 dismisses all these claims against the moving Defendants with
27 prejudice. The Court's conclusion to dismiss with prejudice is
28 supported by the fact that: (1) amendments to the SAC and

1 complaint would be futile since the statutes of limitations
2 governing Plaintiffs' claims are fixed; and (2) Plaintiffs failed
3 to oppose Defendants' arguments that their federal claims are
4 barred by the statute of limitations. See Hoggan v. Specialized
5 Loan Servicing, LLC, No. 2:21-CV-01862-TLN-CKD, 2022 WL 4291421,
6 at *8 (E.D. Cal. Sept. 16, 2022) ("When a plaintiff simply fails
7 to address a particular claim in its opposition to a motion to
8 dismiss that claim, [the] court generally dismisses it with
9 prejudice."); Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir.
10 2002) (finding leave to amend need not be granted when amendment
11 would be futile).

12 2. Failure to State a Claim

13 In addition to the statute of limitations defense discussed
14 above, the Court also finds the SAC and Complaint's federal
15 claims still fall short of Iqbal's mandate that Plaintiffs
16 "plead[] factual content that allows the court to draw the
17 reasonable inference that Defendant[s] [are] liable for the
18 misconduct alleged." Iqbal, 129 S. Ct at 1949 (2008). L. Dean's
19 Complaint uniformly refers to Defendants collectively, failing to
20 provide any factual specificity of how each contributed to the
21 alleged abuses. See Compl. ¶¶ 60-116. "A defendant is entitled
22 to know what actions a plaintiff alleges it engaged in that
23 supports the plaintiff's claims." J.M. v. Pleasant Ridge Union
24 Sch. Dist., No. CV-216-00897-WBS-CKD, 2017 WL 117965, at *2 (E.D.
25 Cal. 2017). As a result, "failure to delineate conduct by a
26 specific defendant prevents the court from drawing the reasonable
27 inference that the specific defendant is liable for the claim
28 alleged and justifies dismissal of the claim." Id.

1 The same is true of the SAC. Unlike L. Dean's Complaint or
2 the FAC where Defendants are exclusively addressed as one unit,
3 the SAC dedicates a paragraph to each Defendants' individual
4 conduct. However, each paragraph repeats the same language to
5 allege Defendants: (1) "unlawfully remove[d] children from low-
6 income homes and place them in state created dangers where the
7 [C]hildren could be trafficked and/or murdered for profit," see
8 e.g. SAC ¶¶ 77-79.; and (2) "engaged in unlawful investigatory
9 conduct, discretionary decisions, and recommendations to ensure
10 that the Pettus children remained separate from their biological
11 family members until they were successfully trafficked for
12 financial gain and/or murdered," Id. As such, the SAC
13 effectively refers to Defendants collectively and fails to
14 provide any factual specificity of how each contributed to the
15 abuses alleged.

16 Moreover, where the assertions are tailored to each
17 Defendant, the SAC lacks the factual detail Iqbal requires to
18 sustain Plaintiffs' contentions. For example, the SAC states
19 Defendant Johnson "personally participated in the unlawful
20 creation and maintenance of financial programs that incentivized"
21 the behavior described above. Id. ¶ 77. Likewise, the SAC
22 claims Defendant Murphy "personally incentivized Kern County
23 employees" to participate in the alleged conduct. Id. ¶ 78. R.
24 Dean and Moorner fail to provide any facts to support these
25 conclusions. These allegations lack the factual content needed
26 for the Court to draw a reasonable inference that Defendants are
27 liable for the misconduct alleged.

28 ///

1 Nonetheless, Plaintiffs argue they fulfilled their burden
2 under Iqbal because Ninth Circuit precedent allows pleading
3 requirements to “be relaxed pending discovery, if the evidence
4 needed to make those allegations is within a defendant’s
5 exclusive possession.” See Opp’n to Johnson MTD II at 5; Opp’n
6 to KCHS MTD II at 4-5. However, the cases Plaintiffs cite to
7 support this contention all concern fraud—which is governed by a
8 different pleading standard under FRCP 9(b). Plaintiffs’ case is
9 not premised on fraud, and thus governed by FRCP Rule 8—which
10 Plaintiffs readily admit. See Opp’n to Johnson MTD II at 5;
11 Opp’n to KCHS MTD II at 5. As a result, Plaintiffs’ argument is
12 without merit and does nothing to preserve their federal claims.

13 Given the above, the Court GRANTS Defendant Johnson and
14 Defendants KCHS, Murphy, and Zavala-Garza’s motions to dismiss
15 all of Plaintiffs’ federal claims with prejudice.

16 3. State Claims

17 In addition to their federal claims, Plaintiffs also bring
18 wrongful death claims under California law. However, such
19 claims operate under “the binding one action rule,” Cotta v.
20 Cnty. of Kings, 79 F. Supp. 3d 1148, 1181 (E.D. Cal. 2015), that
21 permits only one wrongful death action per decedent. Thus, if a
22 wrongful death action is brought after another is filed “the
23 pendency of the prior action may be well pleaded in abatement of
24 it; or, if a judgment has been rendered in the first, such
25 judgment may be well pleaded in bar of the second action.”
26 Munro v. Pac. Coast Dredging & Reclamation Co., 84 Cal. 515,
27 522, 24 P. 303, 305 (1890). Here, a wrongful death action was
28 filed in Kern County Superior Court on behalf of the Children on

1 September 21, 2021—before the SAC and Complaint. See Exh. E to
2 KCHS RJN, ECF No. 51-5 (showing date of filing); Exh A. to KCHS
3 RJN, ECF No. 51-1 (showing wrongful death claims are filed on
4 behalf of the Children). As a result, California law requires
5 the abatement of this cause of action and Defendants' motions to
6 dismiss this claim is granted with prejudice.

7 D. Motion to Stay

8 Plaintiffs also ask this court to stay this case pending the
9 sentencing of Defendants Trezell and Jacqueline West in state
10 court for the Children's murder. The primary reason for their
11 request is their intent to "file a third amended complaint,
12 consolidating [R. Dean and Moorers's] claims with the claims of
13 [L. Dean] and present a comprehensive case before this Court."
14 Mot. to Stay at 5. When weighing whether to stay a civil
15 proceeding due to a pending and parallel criminal one, courts
16 consider the following factors:

17 (1) the interest of the plaintiffs in proceeding
18 expeditiously with this litigation or any particular
19 aspect of it, and the potential prejudice to
20 plaintiffs of a delay; (2) the burden which any
21 particular aspect of the proceedings may impose on
22 defendants; (3) the convenience of the court in the
23 management of its cases, and the efficient use of
24 judicial resources; (4) the interests of persons not
25 parties to the civil litigation; and (5) the interest
26 of the public in the pending civil and criminal
27 litigation.

28 Fed. Sav. & Loan Ins. Corp. v. Molinaro, 889 F.2d 899, 903 (9th

1 Cir. 1989). Given Defendant Johnson and Defendants KCHS, Murphy,
2 and Zavala-Garza have been dismissed with prejudice from this
3 action, Plaintiffs' motion to stay now only applies to Defendants
4 Trezell and Jacqueline West. Notably, those Defendants have not
5 opposed Plaintiffs' motion. Here, the Court finds the first
6 factor weighs in favor of Plaintiffs as the delay caused by
7 granting the motion will not prejudice Plaintiffs in that they
8 are requesting the stay. Moreover, because Defendants Trezell
9 and Jacqueline West did not oppose Plaintiffs' motion, the Court
10 cannot assess whether a stay will be burdensome— making the
11 second factor neutral. The Court finds the final factors are
12 also neutral given: (1) the stay will not burden judicial
13 resources; and (2) the interests of persons not party to this
14 case and public will not be negatively impacted. Because the
15 Court finds four factors are neutral and one favors Plaintiffs,
16 the Court grants Plaintiffs' motion to stay as it pertains to the
17 remaining Defendants, Trezell and Jacqueline West.


18 19 III. ORDER

20 For the reasons stated above, the Court GRANTS Defendant
21 Johnson's and Defendants KCHS, Murphy, and Zavala-Garza's
22 respective motions to dismiss WITH PREJUDICE. The Court also
23 GRANTS Plaintiffs' motion to stay this case against the remaining
24 Defendants, Trezell and Jacqueline West, for 120 days from the
25 date of this Order. Moreover, because the Court GRANTS
26 Defendants' motions to dismiss for the reasons described above,
27 it declines to reach Defendants' unaddressed arguments and
28 requests for judicial notice. The remaining parties shall file a

1 joint status report within thirty days after Trezell and
2 Jacqueline West are sentenced in the criminal case or no later
3 than December 22, 2023, whichever date occurs first.

4 IT IS SO ORDERED.

5 Dated: August 24, 2023

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8 JOHN A. MENDEZ
9 SENIOR UNITED STATES DISTRICT JUDGE
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